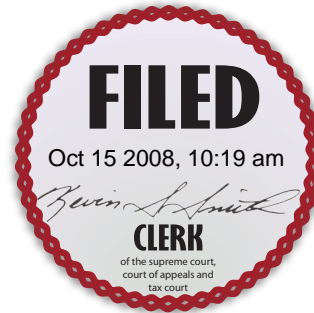


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNY L. BRASTER, SR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0802-CR-88

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0703-FD-208

October 15, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Johnny L. Braster, Sr. (“Braster”) was convicted following a bench trial in Allen Superior Court of Class D felony possession of cocaine and Class A misdemeanor possession of paraphernalia. He was sentenced to an aggregate term of one year executed. Braster appeals, arguing that the trial court abused its discretion in admitting evidence seized following search of Braster’s belonging.

We affirm.

Facts and Procedural History

On March 4, 2007, at approximately 10:00 a.m., Fort Wayne Police Officer Scott Wilson (“Officer Wilson”) was patrolling in an area known for having a high rate of drugs and prostitution. He noticed Braster pacing in the entrance to a motel’s parking lot, holding a plastic bag. Officer Wilson, concerned that Braster was lost or under the influence of some narcotic, stopped in the parking lot.

Officer Wilson pulled up next to Braster and, while remaining in his vehicle, asked Braster what he was doing there. Braster answered that he was waiting for his wife. Officer Wilson then asked for Braster’s name. Braster replied and Officer Wilson ran the name through his in-car computer. The check came back and notified Officer Wilson that Braster had an “alert” for using narcotics.

Officer Wilson then asked Braster whether the officer would find any drug paraphernalia or anything illegal if he patted Braster down. Officer Wilson testified that Braster answered that the officer would find drug paraphernalia. Braster testified that he told the officer that he had nothing on him. Officer Wilson exited his vehicle, patted Braster down, but found nothing.

Braster told the officer that the paraphernalia was in a Crown Royal bag inside of the plastic bag he was holding. Officer Wilson opened the plastic bag and found motel towels. He also found one Crown Royal bag that contained nothing, but another Crown Royal bag contained clear glass pipes commonly used for smoking crack cocaine and a spoon with white residue on it.

Officer Wilson placed Braster under arrest, placed him in the officer's vehicle, and transported him to the lockup. While at the lockup, Braster inquired about a bottle of nitroglycerin for his heart problem. Officer Wilson went to the police station to retrieve the medication. The officer found a brown bottle among the effects seized, opened the bottle, and saw what he believed to be crack cocaine. Subsequent testing confirmed the belief.

On March 8, 2007, the State charged Braster with Class D felony possession of cocaine and Class A misdemeanor possession of paraphernalia. On November 15, 2007, Braster filed a motion to suppress evidence seized as a result of the stop on March 4, 2007. However, pursuant to agreement, the motion would be argued contemporaneously with the bench trial.

On November 27, 2007, the bench trial commenced. Braster objected to the introduction of the crack cocaine and the paraphernalia in accord with his motion to suppress. The trial court overruled the objection. The trial court found Braster guilty on both counts. On December 28, 2007, the trial court sentenced Braster to two concurrent terms of one year with 111 days of jail time credit. Braster appeals.

Discussion and Decision

Braster argues that the trial court abused its discretion by admitting evidence seized pursuant to an allegedly illegal search and testimony presented regarding the search and seizure. Since the trial court denied Braster's motion to suppress during trial and Braster is appealing after trial, the issue is more "appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial." Lundquist v. State, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005). The standard of review is essentially the same regarding a challenge made in a pre-trial motion to suppress or by objection at trial. Id. We consider conflicting evidence most favorable to the trial court's ruling and we do not reweigh the evidence. Id. Also, we must consider uncontested evidence favorable to the defendant. Id.

Regardless of whether the exhibits should have been admitted, the admission of such was harmless. If the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless. Cooley v. State, 682 N.E.2d 1277, 1282 (Ind. 1997). Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. Montgomery v. State, 694 N.E.2d 1137, 1140 (Ind. 1998). In viewing the effect of the evidentiary ruling on a defendant's substantial rights, we look to the probable impact on the factfinder. Id. "The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction." Cook v. State, 734 N.E.2d 563, 569 (Ind. 2000).

According to Officer Wilson's testimony, drug paraphernalia was found among Braster's belongings, and Braster admitted to the possession of the paraphernalia. Also, Officer Wilson testified that he found crack cocaine in a brown bottle that was found amongst Braster's belongings. Braster did not object to this testimony. Clearly, the admission of the exhibits was cumulative of Officer Wilson's testimony regarding the drug paraphernalia and the crack cocaine, and Braster's conviction was supported by such quantity of evidence of guilt as to satisfy us that any error in the admission of the challenged evidence was harmless.

Affirmed.

BAKER, C.J., and BROWN, J., concur.